SUPREME COURT OF THE UNITED STATES

OCTOBER TERM, 1979

79-6678

RECEIVED
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SUPREME COURT, U.S.

WILLIAM L. DONNELLY, APPELLANT

V

MIDDLESEX SUPERIOR COURT, ET AL, APPELLEES

APPEAL FROM THE JUDGMENT OF THE
MASSACHUSETTS APPEALS COURT

William L. Donnelly
Appellant, pro se
33 Crescent Street
West Newton, Mass. 02165

(617) 527-2194

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OPINIONS BELOW

1. The order of the single justice of the Massachusetts Appeals Court denying certiorari is unreported and is appended hereto at 1a.

2. The opinion of the Massachusetts Appeals Court affirming the order of the single justice is unreported and is appended hereto at 3a.

3. The order of the Massachusetts Supreme Judicial Court denying further appellate review is unreported and is appended hereto at 4a.

JURISDICTION

This Court has jurisdiction to review by appeal the final judgments rendered by the highest State Court in which a decision could be had when there is drawn in question the validity of a statute of the United States and the decision is against its validity. 28 U.S.C. s. 1257(1).

The proceedings below challenged the validity of certain other proceedings in lower state courts after the causes had been removed to the United States District Court for the District of Massachusetts ("District Court") pursuant to 28 U.S.C. ss. 1441 and 1443.

Subsequent to removal and prior to remand from the District Court, the state Probate Court caused the appeal of a divorce action to be docketed in the Massachusetts Appeals Court (14a) which in turn, despite notice of the removal to District Court (5a), dismissed the appeal for failure to prosecute. The State Probate Court next entered a divorce decree absolute and, on

the basis of this divorce decree absolute, a state Superior Court released certain funds it was holding in escrow.

The opinion of the Massachusetts Appeals Court (3a) was rendered on January 18, 1980.

The order of the Massachusetts Supreme Judicial Court (4a) denying further appellate review was rendered on February 28, 1980.

The claim of appeal to this Court (7a) was filed below on May 23, 1980.

This Court has jurisdiction pursuant to 28 U.S.C. s. 1257(1). Seaboard Air Lines R. Co. v Daniel, 333 U.S. 118, 68 S.Ct. 426 (1948).

This appeal is predicated upon the fact that the decisions below are contrary to the mandate of 28 U.S.C. s. 1446(e) which provides:

> "Promptly after the filing of such [removal] petition and bond the defendant or defendants shall give written notice thereof to all adverse parties and shall file a copy of the petition with the clerk of such State court, which shall effect the removal and the State court shall proceed no further unless and until the case is remanded."

QUESTION PRESENTED

Whether all state court proceedings — subsequent to the removal of a cause to federal district court and prior to its remand — are null and void for lack of jurisdiction in the state courts?

STATEMENT OF THE CASE

In November of 1978, Jane P. Donnelly filed a motion (8a) in the Middlesex Superior Court ("Superior Court") seeking the release of certain funds escrowed with that Court. In support

of her motion, Jane Donnelly filed an affidavit (9a) contending that she was entitled to this fund because of a divorce decree absolute entered on the docket of the Middlesex Probate Court ("Probate Court") on August 12, 1975.

This fund arose from an interpleader action filed by the mortagee following the foreclosure in the Fall of 1973 of the mortgage on real property jointly owned by William and Jane Donnelly. In May of 1973 the Probate Court had ordered William Donnelly to convey his interest in this property to Jane Donnelly as part of a divorce decree nisi granted to Jane Donnelly. 1/

William Donnelly filed a motion with the Superior Court opposing release of the escrow on the ground, inter alia, that the divorce action and a related certiorari petition in the Supreme Judicial Court (Donnelly v Freedman, No. 74-53 Law) 2/ had both been removed to federal district court on October 15, 1974 pursuant to 28 U.S.C. ss. 1441 and 1443; that copies of the removal petition had been filed with the Register of Probate on October 17, 1974 (11a) and with the Clerk of the Supreme Judicial Court on October 18, 1974 (12a); that the District Court had not remanded the causes back to the respective state courts until December 28, 1976 (13a); and that the Probate Court's docketing (14a) of William Donnelly's appeal from the decree nisi in the

1/ Both the conveyance and the foreclosure are challenged in another action now pending in the District Court. Donnelly v Martin (USDC No. 75-3785-M). The federal defendants' (H.U.D.) motion to dismiss has been denied and William Donnelly has moved for summary judgment and return of this property.

2/ This petition attacks the jurisdiction of the Probate Court since the Donnellys were domiciled in the U.S. Virgin Islands until September of 1972 and Jane Donnelly, who alleged cruel and abusive treatment in the Virgin Islands in her divorce libel, did not acquire a bona fide domicile in Massachusetts for divorce purposes. See Mass. Gen. L. c. 208, ss. 4 & 5 which require a two year residency in this situation. Peace v Peace, 362 Mass. 536, 537-38, 288 N.E. 2d 352 (1972)

Appeals Court on March 4, 1975 and the subsequent dismissal of the appeal on August 12, 1975 for failure to prosecute and the entry, also on August 12, 1975, of a divorce decree absolute in the Probate Court (Doc. No. 44 & 45) were null and void and of no effect since state courts had been divested of all jurisdiction pursuant to 28 U.S.C. s. 1446(e).

On December 12, 1978, the Superior Court ordered all but $6,000.00 of the escrow released to Jane Donnelly but stayed its order until December 29, 1978 to permit William Donnelly to seek an order enjoining the release of the escrow from either the Probate Court, the Supreme Judicial Court, or the District Court.

On December 18, 1978, the Probate Court refused to hear a motion (16a) to set aside the entry of the decree absolute as a violation of 28 U.S.C. s. 1446(e).

On December 28, 1978, William Donnelly filed a Certiorari Petition (18a et seq) in the Massachusetts Supreme Judicial Court (No. 78-485) seeking an order enjoining the release of the escrow. This petition was also predicated, in part, on the fact that the divorce decree absolute had been entered when exclusive jurisdiction of the divorce action was vested in the District Court. This petition was transferred to a single justice of the Appeals Court (No. 78-0375CV.) who denied the prayer for a temporary restraining order.

On December 29, 1978, William Donnelly removed both the Interpleader and Divorce cases to the District Court (No. 79-39-M) which, on its own motion, remanded the two causes on January 17, 1979.

On or about January 20, 1979, the Superior Court released approximately $8,000.00 of the escrow to Jane Donnelly. 3/

On March 20, 1979, the single justice of the Appeals Court dismissed the certiorari petition for the reasons set forth in the attached order (1a).

On appeal, William Donnelly argued on brief that all of the lower state court proceedings between October 15, 1974 (removal) and December 28, 1976 (remand) were null and void pursuant to 28 U.S.C. s. 1446(e). Donnelly v Superior Court, Appeals Court No. 79-405, Brief for the Appellant, pp. 16-19. The Appeals Court, however, affirmed the dismissal on January 18, 1980 (3a).

On February 28, 1980, the Massachusetts Supreme Judicial Court denied an application for further appellate review (4a). Once Again William Donnelly argued that all state court proceedings prior to the federal remand order on December 28, 1976 were a nullity. Application of Appellant, pp. 13-16.

REASONS WHY THE FEDERAL QUESTION PRESENTED IS SUBSTANTIAL

Massachusetts concedes, as it must, that the Supremacy Clause (Article VI of the United States Constitution) renders invalid state actions that conflict with federal law. MacDonald v Carr, 355 Mass. 120, 123 (1969).

Massachusetts has also acknowledged that, under 28 U.S.C. s. 1446(e), "the State court loses all jurisdiction after compliance with that statute until there has been a remand". Garden Homes v District Court of Somerville, 336 Mass. 432, 146 N.E.2d 372

3/ The remaining $6,000.00 of the escrow was subsequently released to the estate of Francis L. Donnelly in repayment of money advanced for repairs and improvements to the subject real property.

374 (1957)(citations omitted). Garden Homes dealt with the refusal of the lower state court to proceed further following removal to federal court.

The decisions below in the case at bar fly in the face of every single federal and state court which has considered the question of further state proceedings following removal and prior to remand. All unanimously agree that the language of s. 1446(e) that "the State court shall proceed no further" is crystal clear and that any further proceedings in the state court prior to a federal remand order are null and void and of no effect. South Carolina v Moore, 447 F.2d 1067 (4th Cir. 1971). Berberian v Gibney, 514 F.2d 790 (1st Cir. 1975). Styers v Pico, 236 Ga. 258, 223 S.E.2d 656 (1976).

This unyielding principle applies even if the cause removed is one of divorce. Davis v Davis, 267 So. C. 508, 229 S.E.2d 847 (1976). Cavanagh v Cavanagh, 380 A.2d 964 (R.I. 1977). Cook v Cook, 395 A.2d 722 (R.I. 1978). Like the case at bar, Cook involved a certiorari petition to the State Supreme Court to set aside further proceedings in the Family Court following removal to federal court. The Rhode Island Supreme Court granted the writ and quashed the Family Court decree holding that the federal court had exclusive jurisdiction.

In re Marriage of Pardee, 408 F.Supp. 666 (CD Cal. 1976), also involved the removal of a divorce action. There the husband had filed for divorce. His wife filed an action against his pension trust and also made the trust a party to the divorce action. The trust removed the case to federal district court (29 U.S.C. s. 1132(e). Prior to remand the state court there,

as in the instant case, entered a final divorce decree. The District Court indicated that the state court lacked jurisdiction to enter a final divorce decree since it had been divested of all jurisdiction once a copy of the removal petition had been filed with the state court.

Nor can it be seriously contended that the docketing of the appeal from the divorce decree nisi in the Appeals Court on March 4, 1975 (14a) did not bring the Appeals Court within the mandate of 28 U.S.C. s. 1446(e). The Appeals Court was informed both by letter (29a) and by a special appearance (5a) that the cause had been removed to federal court. As the Fifth Circuit Court of Appeals said in Medrano v State of Tex., 580 F.2d 803, 804 (1978):

> "Regardless of the merits of the petition, 28 U.S.C. s. 1446(e) clearly requires that the state stop all proceedings, once notice is given, until a determination on the merits of the petition for removal is made in federal court. . . . /E/ven constructive notice under 28 U.S.C. s. 1446(e) would have been sufficient to deprive the state court of jurisdiction, thus making any further proceedings void."(citations Omitted).

CONCLUSION

The decisions below have effectively invalidated a federal statute.and should be reversed.

Respectfully submitted,

William L. Donnelly

May 23, 1980

William L. Donnelly
Appellant, pro se
33 Crescent Street
West Newton, Massachusetts 02165
(617) 527-2194

COMMONWEALTH OF MASSACHUSETTS

APPEALS COURT

NO. 78-0375-CV

WILLIAM L. DONNELLY

vs.

MIDDLESEX SUPERIOR COURT ET AL.

ORDER

This petition for relief in the nature of certiorari is the latest of the petitioner's efforts to have vacated the decree of divorce absolute entered in the Probate Court on August 12, 1975 (Middlesex divorce docket no. 94432). These efforts have included actions in the United States District Court for the District of Massachusetts, which were dismissed, a petition for a writ of certiorari filed and ultimately disposed of by dismissal in the Supreme Judicial Court and a petition for a writ of habeas corpus which was ultimately dismissed in this court on November 7, 1977 (Nos. 77-0103 CV and 77-0169 CV).

After having labored through the numerous papers filed in the several courts in which the petitioner has aired his complaints and having read the present petition and its supporting memorandum, it has become apparent that most of the petitioner's problems have arisen because of his insistence on following procedures of his own invention or because

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of his adaptations of the statutes and rules of court as he would have them interpreted.

The petitioner eventually had his appeal from the divorce judgment entered in this court. Had he followed the procedures established by the rules of this court, he could in all probability had his appeal heard and disposed of. He could then, if dissatisfied, have requested further appellate review before the Supreme Judicial Court. Having failed to follow the appropriate procedures, however, he cannot now attempt to obtain the relief he considers due him by the inappropriate mechanism of the present petition.

It is ORDERED that the petition be and hereby is DISMISSED.

By the Court (Hale, C.J.)

Nancy Ann Turck
Assistant Clerk

Entered: March 20, 1979.

2a

S. 79-405 Appeals Court

WILLIAM L. DONNELLY vs. THE APPEALS COURT & others.

This case began as a petition for relief in the nature of certiorari in the Supreme Judicial Court against the Appeals Court, the Superior Court, the Probate Court for the county of Middlesex, the clerk of the Appeals Court in his capacity as such, and the register of probate of Middlesex County. The petition appears to seek injunctive relief against implementation of an order of the Superior Court releasing certain funds from escrow to Donnelly's former wife. The petition was transferred to this court and denied by a single justice. Behind the petition lies Donnelly's objection to a decree of divorce entered May 25, 1973, and a custody order entered February 14, 1974. These actions have long since become final. Although the Supreme Judicial Court offered the appellant an avenue of relief on June 10, 1974, he chose not to follow it and took an unsuccessful excursion to the United States District Court. In the meantime, the orders of the Probate Court became final and immune from collateral attack. No valid appeal could be entered. Ullian v. Ullian, 3 Mass. App. Ct. 729 (1975). The appellant has, thus, ignored the Massachusetts Rules of Civil Procedure, the Massachusetts Rules of Appellate Procedure, and orders of several courts. The petitioner cannot reopen matters fully litigated and beyond appeal and his efforts so to do are nothing more than an "effort to evade in an irregular manner" final decrees. Bay State Cafe, Inc. v. Cohen, 336 Mass. 758 (1957).

This case has long been over, and the petition was rightly dismissed.

Judgment affirmed.

3a

COMMONWEALTH OF MASSACHUSETTS

SUPREME JUDICIAL COURT FOR THE COMMONWEALTH,
AT BOSTON, February 27, 1980

ORDER

It is hereby Ordered, that the following Applications for Further Appellate Review are denied:

M-1446 ROGER JENNETT v. COLORADO FUEL & IRON
Opp. CORP. & another; WALTER BOYKO & others
(3rd party defendants)
(and a companion case)

Hampden Superior Court No. 130982
Appeals Court Nos. A.C. 78-714, 78-715

Plaintiff's Motion for Entry of Judgment - Allowed

M-1447 COMMONWEALTH v. PAUL A. ZEIGLER

Suffolk Superior Court Nos. 014563 -
014565; Appeals Court No. A.C. 79-561

M-1448 FRANCIS E. MONTAGUE v. COMM'R. OF THE
METROPOLITAN DISTRICT COMMISSION ET AL

Suffolk Superior Court No. 27893
Appeals Court No. A.C. 78-900

M-1451 WILLIAM L. DONNELLY v. APPEALS COURT &
others
Supreme Judicial Court -Suffolk County
No. 78-485; Appeals Court No. 78-485

M-1452 CLINTON N. KOUFMAN & others v. NEW ENGLAND MERCHANTS
Opp. NATIONAL BANK OF BOSTON & others

Suffolk Superior Court No. 99120
Appeals Court No. A.C. 78-258

*Motion to File Application Late * - Allowed
(Mr. Justice Liacos did not participate)

By the Court,

Patrick J. Doherty
Clerk

4a

APPEALS COURT

JANE P. DONNELLY)
V)
WILLIAM L. DONNELLY) No. A.C. 75-163

SPECIAL APPEARANCE AND MOTION IN OPPOSITION

Now comes William L. Donnelly and, pursuant to Appellate Rule 15 and Mass. Rules Civ. Procedure Rule 1, Rule 11 (b) (3) and Rule 12 (b) and Title 28 USC Section 1446 (e), appears especially to oppose dismissal of above action for lack of prosecution for failure to file appellant's brief and record appendix and states the following:

1. This cause of action arose in Middlesex Probate Court on December 2, 1972, Divorce Libel No. 94432.

2. On October 15, 1974 Divorce No. 94432 and a related action, Petition For Certiorari, Supreme Judicial Court No. 74-[illegible], were, pursuant to 28 USC Section 1443, removed to the United States District Court, District of Massachusetts (Docket No. 74-[illegible]).

3. On October 16, 1974, pursuant to 28 USC Section 1446(e), copies of Petition for Removal No. 74-[illegible] were filed with the Register of Probate for Middlesex Probate Court and with the Clerk of the Supreme Judicial Court. Written notice of said removal was also given to counsel for Jane Donnelly.

4. Pursuant to 28 USC Section 1446(e) filing of said copies of said removal petition with the State courts "shall effect the removal and the State court shall proceed no further unless and until the case is remanded".

5. On March 4, 1975, Warren Fitzgerald, Assistant Register of Middlesex Probate Court, caused the appeal of Divorce No. 94432 to be entered on the docket of this Honorable Court (Docket No. 75-163)

6. On March 14, 1975 William L. Donnelly filed a Motion For Injunction with the United States District Court asking that Court to enjoin this Honorable Court from proceeding further pending disposition of Removal Petition No. 74-[illegible].

7. Copies of said motion for injunction were filed with the Clerk of this Court, with the Clerk of the Supreme Judicial Court, with the Register of Middlesex Probate Court and with Alan Posner, Assistant Attorney General, counsel for the state respondents in said removal petition.

5a

8. This Honorable Court lacks jurisdiction over this matter.

Wherefore, William L. Donnelly moves that this Honorable Court return, without prejudice, the record on this matter to Middlesex Probate Court pending disposition of the matter in or remand from the United States District Court.

Respectfully submitted,

William L. Donnelly

July 16, 1975 William L. Donnelly, pro se

CERTIFICATE OF SERVICE

I, William L. Donnelly, certify that I have this day served a copy of the above motion on the other parties to this action by mailing copies of said motion, postage prepaid, to Stephen Domesick, Esquire, 30 Newbury Street, Boston, Massachusetts and Alan Posner, Assistant Attorney General, 373 State House, Boston, Massachusetts 02133. Signed under the penalties of perjury.

William L. Donnelly

July 16, 1975

William L. Donnelly
33 Crescent Street
West Newton, Massachusetts 02165
527-2104

lw

COMMONWEALTH OF MASSACHUSETTS
APPEALS COURT

MIDDLESEX, SS

NO. 79-405

WILLIAM L. DONNELLY
Appellant

V

MIDDLESEX SUPERIOR COURT, ET AL
Appellees

NOTICE OF APPEAL

Notice is hereby given that William L. Donnelly, appellant above named, hereby appeals to the Supreme Court of the United States pursuant to Title 28 United States Code Section 1257(1) from the January 18, 1980 order affirming the dismissal of Certiorari Petition No. 78-0375 Cv. by a single justice of the Appeals Court. The Supreme Judicial Court (No. M-1451), on February 28, 1980, denied appellant's application for leave to obtain further appellate review.

For the appellant,

May 23, 1980

William L. Donnelly, pro se
33 Crescent Street
West Newton, Mass. 02165

(617) 527-2194

CERTIFICATE OF SERVICE

I, William L. Donnelly, certify that I have this day served a copy of the above Notice of Appeal on the appellees by mailing copies of same, postage prepaid to James A. Aloisi, Assistant Attorney General, 1 Ashburton Place, Boston, Mass. 02108 and to John R. Jennings, Esq., 70 South Street, Wrentham, Mass. 02093. Signed under the penalties of perjury.

May 23, 1980

William L. Donnelly

7a

COMMONWEALTH OF MASSACHUSETTS

MIDDLESEX, SS.

MIDDLESEX COUNTY
SUPERIOR COURT
EQUITY NO. 36560

NEWTON SAVINGS BANK
Plaintiff

VS

WILLIAM L. DONNELLY, JANE P. DONNELLY, [illegible], JR., and
FRANCIS L. DONNELLY
Defendants

MOTION OF DEFENDANT JANE P. DONNELLY FOR RELEASE OF FUNDS

Now comes the Defendant Jane P. Donnelly in the above entitled matter and moves this Honorable Court to order the Clerk of Courts for the Middlesex County Superior Court to pay to the Defendant, Jane P. Donnelly, the sum of Eleven Thousand Three Hundred Eighteen Dollars and Seventy Two Cents ($11, 318.72 together with interest to date, said funds presently being held in a savings bank by the Middlesex County Superior Court.

By her Attorney:

JOHN R. JENNINGS
70 South Street
Wrentham, Mass. 02093
Tel. 384-8161

8a

COMMONWEALTH OF MASSACHUSETTS

MIDDLESEX, SS.

MIDDLESEX COUNTY
SUPERIOR COURT
EQUITY NO. 36960

NEWTON SAVINGS BANK
Plaintiff

VS

WILLIAM L. DONNELLY, JANE P. DONNELLY, BERNARD P. [illegible], and FRANCIS L. DONNELLY
Defendants

AFFIDAVIT OF JANE P. DONNELLY IN SUPPORT OF MOTION FOR RELEASE OF FUNDS

Now comes Jane P. Donnelly and on oath deposes and says:

1) My name is Jane P. Donnelly, I reside at 31 Fairmount Avenue, Brockton, Plymouth County, Massachusetts. I am a defendant in the above entitled matter, and also a defendant in the matter of William L. Donnelly vs. Jane P. Donnelly, et al, Middlesex Superior Court in Equity, Docket No. 36461, and the plaintiff in the matter of Jane P. Donnelly vs. William L. Donnelly, Divorce Libel, Middlesex County Probate Court, Docket No. 94402.

On or about June 13, 1974, POTTE - J ordered that the Newton Savings Bank pay into this Court the sum of Eleven Thousand Three Hundred Eighteen Dollars and Seventy Two Cents ($11,318.72), which represented the surplus money remaining after the foreclosure sale of certain property being known and numbered 246 Central Street, Auburndale, District of Newton, Massachusetts, described in Certificate of Title No. 120273 in Registration Book 731, Page 123 for the South Registry District of Middlesex County, and further ordered the Clerk to hold the same subject to further orders of the Court in accordance with Exhibit A annexed hereto and marked "Exhibit A".

2) On or about December 4, 1974 the Newton Savings Bank paid to the Court the sum of Eleven Thousand Three Hundred Eighteen Dollars and Seventy Two Cents, ($11,318.72) in accordance with the above order.

9a

3) On or about May 25, 1973 I, Jane P. Donnelly obtained a Decree Nisi from the Middlesex County Probate Court in the matter of Jane P. Donnelly vs. William L. Donnelly, Docket No. 94432, which Decree of Divorce became absolute on November 25, 1973, a copy of which is annexed hereto and marked "Exhibit B". As part of the aforementioned Decree of Divorce, the Libelee, William L. Donnelly was ordered to "convey his interest in real estate located at 246-248 Central Street as shown on Certificate of Title No. 120213, recorded with the Middlesex (SO) District Land Court, Book 731, Page. 123.

4. The defendant, William L. Donnelly, has exhausted all his rights of appeal in the matter of Jane P. Donnelly vs. William L. Donnelly, Probate Court No. 94432 and the Decree of Divorce dated May 25, 1973 has been affirmed. As the subject matter of Eleven Thousand Three Hundred Eighteen Dollars and Seventy Two Cents ($11,318.72) is the balance of equity left in the residential property located at 246-248 Central Street, Newton, Massachusetts after the foreclosure of the property by Newton Savings Bank, and is the same real estate ordered conveyed to Jane P. Donnelly in her Decree of Divorce, I, Jane P. Donnelly hereby request this honorable Court to order the Clerk of the Middlesex County Superior Court to release the Eleven Thousand Three Hundred Eighteen Dollars and Seventy Two Cents, ($11,318.72), togeather with interest, to me.

Signed and sealed under the pains and penalties of perjury this day of , 1978.

JANE P. DONNELLY

10a

October 17, 1974

This is to acknowledge receipt of Petition for Removal to Supreme Court Divorce No. 94432 but not filed

John V. Harvey Register

RL

11a

33 Crescent Street
West Newton, Massachusetts 02165
October 16, 1974

John E. Powers, Clerk
Supreme Judicial Court
Boston, Massachusetts

John V. Harvey, Register
Middlesex Probate Court
Cambridge, Massachusetts

Ref: Certiorari No. 74-52, Supreme Judicial Court
Divorce No. 94432, Middlesex Probate Court

Gentlemen:

Pursuant to the provisions of 28 USC 1441, 1443 & 1446, the above referenced actions were, on October 15, 1974, removed to the United States District Court, District of Massachusetts.

Enclosed, for your records, is a copy of Petition For Removal No. 74-4200H.

Yours truly,

William L. Donnelly
William L. Donnelly

RECEIVED
OCT 16 1974
CLERK OF THE
SUPREME JUDICIAL COURT
FOR SUFFOLK COUNTY

12

UNITED STATES DISTRICT COURT
DISTRICT OF MASSACHUSETTS

WILLIAM L. DONNELLY,

Petitioner

v.

JANE P. DONNELLY ET AL,

Respondent

CIVIL ACTION
No. 74-4800-M

ORDER OF REMAND

MURRAY, D.J.

Upon its own motion the court hereby remands, pursuant to 28 U.S.C. § 1447(c), the case of Jane P. Donnelly v. William L. Donnelly (Divorce Libel No. 94432) to the Probate Court for the County of Middlesex in the Commonwealth of Massachusetts, the case having been removed improvidently and without federal jurisdiction.

United States District Judge

December 28, 1976

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A.C. No. AC 75-163 A TRUE COPY attested Mass. Supreme Judicial Court

Sitting ..... Commonwealth of Massachusetts S.J.C. No. .....

(This statement must be used in all appeal entries.) Sitting Clerk

Trial Court: PROBATE COURT

County: MIDDLESEX.

Jane P. Donnelly

Plaintiff Appellee

v.

William L. Donnelly

Defendant Appellant

APPEARANCES

For plaintiff: Appellee (Name(s), firm(s), and telephone numbers.)

Stephen Domesick

30 Newbury Street

Boston, Mass. 536-8700

For defendant: Appellant

William L. Donnelly PRO SE

33 Crescent Street

Newton, Mass. 527-2194

Nature of case: Divorce

Decision Allowed

Action by the court:

Appeal(s) by William L. Donnelly

Warren J. Fitzgerald

Assistant Register

Date: Feb 25 1975

TO THE CLERK OF THE SUPREME JUDICIAL COURT OR OF THE APPEALS COURT

(This notice should accompany 2 copies of docket entries, and notice of completion of the record.)

A.C. entry date _____ S.J.C. entry date _____

S.J.C. office use Transfer _____ Further Review _____ Direct Review _____

14a

K.

Commonwealth of Massachusetts

MIDDLESEX, ss.

SUPERIOR COURT

8

EQUITY NO. 38560

NEWTON SAVINGS BANK

VS.

ORDER ON MOTION FOR RELEASE OF FUNDS

WILLIAM L. DONNELLY, JANE P. DONNELLY
BERNARD R. SILVA, JR., and
FRANCIS L. DONNELLY

This action came on for hearing before the Court, Young, J. presiding, upon the motion of the defendant, Jane P. Donnelly, for release of funds, and thereupon, upon consideration thereof, it is ORDERED and ADJUDGED:

1. That the Clerk of Court be and hereby is authorized to retain the sum of Six Thousand Dollars ($6000.00) to be held by him until further order of the Court.
2. That the Clerk of Courts be and hereby is ordered to pay to the defendant, Jane P. Donnolly the remainder of the balance in his hands on December 29, 1978.

Dated at Cambridge, Massachusetts, this twelfth day of December, 1978.

Robert F. Trant
Assistant Clerk

15a

COMMONWEALTH OF MASSACHUSETTS

MIDDLESEX, SS

PROBATE COURT

JANE P. DONNELLY
Libellant

DIVORCE NO. 94432

V

WILLIAM L. DONNELLY
Libellee

MOTION TO SET ASIDE
ENTRY OF DECREE ABSOLUTE

Now comes the libellee and moves that this Court set aside the August 12, 1975 entry of a decree absolute in the above entitled action and states as grounds:

I

The libellee's statement of objections to the decree nisi becoming absolute were seasonably filed on November 19, 1973 (per order of Hays, J.). Said objections have not been disposed of by this Court and a decree absolute cannot be entered prior to disposition of said objections. Scholz v Scholz, ___Mass. ____, 324 N.E.2d 617 (1975). Silverstein v Silverstein,(Mass.App.Ct.), 308 N.E.2d 773 (1974).

One of the libellee's objections is want of subject matter jurisdiction (Mass.G.L.A. c. 208, ss 4 & 5) and fraud on the part of the libellant. If a probate court lacks jurisdiction, its decrees are null and void and must be set aside, Peters v Peters, 62 (8 Cush.) Mass. 529, 543 (1851), and a divorce decree obtained by fraud may be set aside "even after it has become absolute", Scholz v Scholz, supra, at 618

II

(1) On October 16, 1974, Divorce Action No. 94432 and a companion case, Donnelly v Freedman, et al, Supreme Judicial Court No. 74-53 Law, were both removed to the United States District Court for the District of Massachusetts (USDC No. 74-4800-M) pursuant to Title 28 United States Code, Sections 1441 and 1443.

Exh. "D-1" 16a

Copies of said Removal Petition were seasonably filed with the Middlesex Register of Probate and with the Clerk for the Supreme Judicial Court (copies of receipts attached hereto).

(2) Under 28 U.S.C. s. 1446(e), removal vests exclusive jurisdiction in the federal district court and "the State court[s] shall proceed no further unless and until the case is remanded". Divorce Libel 94432 was not remanded back to this Court until December 28, 1976 (copy of remand order attached).

(3) On or about March 4, 1975, Warren Fitzgerald, Assistant Register of Probate, caused the appeal of Divorce Libel 94432 to be entered in the Massachusetts Appeals Court (No. A.C. 75-163).

(4) On or about July 16, 1975, William L. Donnelly filed a special appearance in the Appeals Court (copy attached) to inform that Court that it lacked jurisdiction pursuant to 28 U.S.C. 1446(e).

(5) On August 12, 1975, the notice from the Appeals Court dismissing Appeal No. A.C. 75-163 was entered on the docket for Divorce Action 94432 at the Registry of Probate.

(6). On August 12, 1975, a decree absolute was entered on the docket for Divorce Action 94432 at the Registry of Probate.

(7) All of these proceedings (items 3-6 above) in State courts — subsequent to removal to federal court, and prior to remand — are null and void and must be set aside. Styers v Pice, 236 Ga. 258, 223 S.E.2d 656 (1976). Barrett v Southern Railway, 68 F.R.D. 413 (D. S.C. 1975).

For the libellee,

William L. Donnelly

November 13, 1978

William L. Donnelly, pro se
33 Crescent Street
W. Newton, Mass. 02165

17a

COMMONWEALTH OF MASSACHUSETTS

MIDDLESEX SS

SUPREME JUDICIAL COURT

WILLIAM L. DONNELLY
Petitioner

NO. 78-485

A.C. 78-0375 C.V

v

MIDDLESEX SUPERIOR COURT,
MIDDLESEX PROBATE COURT,
MASSACHUSETTS APPEALS COURT,
JOHN P. POWERS as the Clerk of the Massachusetts Appeals Court and PAUL J. CAVANAUGH as the Register of the Middlesex Probate Court
Respondents

PETITION FOR RELIEF IN THE NATURE OF CERTIORARI

JURISDICTION

This Court's jurisdiction is invoked pursuant to Mass.G.L.A. Chapter 249, Section 4.

1. On or about October 15, 1974, the matter of Jane P. Donnelly v Hillian L. Donnelly, Middlesex Probate Cout (Divorce No. 94432) was removed to the United States District Court for the District of Massachusetts. Concurrentley, a companion case, Donnelly v Freedman, et al, S.J.C. No. 74-53 Law, was also removed to federal district court.

2. On October 17, 1974, a copy of said removal petition (USDC No. 74-4300-H) was filed with the Register for the Middlesex Probate Court. On October 18, 1974, a copy of said removal petition was filed with the Clerk of this Court.

3. Under Title 28 U.S.C. s. 1446(e) said removal vested exclusive jurisdiction in the federal district court and "the State court[s] shall proceed no further unless and until the case is remanded". The United States District Court for the District of Massachusetts did not remand the matter back to the courts of this Commonwealth until December 23, 1976 (An attested copy of the federal district court docket entries is attached hereto)

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4. On or about March 4, 1975, Warren Fitzgerald, Assistant Register of Probate for the Middlesex Probate Court, caused the appeal of Divorce Libel 94432 to be entered in the Massachusetts Appeals Court (No. A.C. 75-163).

5. On March 14, 1975, William L. Donnelly wrote a letter (copy attached) to Clerk Powers to inform him that Divorce Libel 94432 had been removed to federal court and that the state courts had been divested of all jurisdiction.

6. On April 23, 1975, June 26, 1975 and July 11, 1975, Clerk Powers sent letters to William L. Donnelly warning that the appeal of Divorce No. 94432 would be dismissed for failure to file briefs and the record appendix.

7. On or about July 16, 1975, William L. Donnelly filed a special appearance and motion with the Massachusetts Appeals Court to inform that Court that it lacked jurisdiction because of the removal to federal court(28 U.S.C. 1446(e)).

8. On August 12, 1975, the notice from the Appeals Court dismissing Appeal No. 75-163 was entered on the docket for Divorce Action No. 94432 at the Middlesex Registry of Probate.

9. On August 12, 1975, a divorce decree absolute was entered on the docket for Divorce No. 94432 at the Middlesex Registry of Probate.

10. All of these proceedings (items 4-9 above) in the Courts of Massachusetts — subsequent to removal and prior to remand — are null and void and must be set aside. Gardon Homes, Inc. v District Court of Somerville, 336 Mass 432, 146 N.E.2d 372 (1957). State of South Carolina v Moore, 447 F.2d 1067 (4th Cir. 1971). Davis v Davis, 229 S.E.2d 847 (S.C. 1976)(Divorce).

11. On December 18, 1973, the Probate Court (McGovern, J.) refused to rule on William L. Donnelly's motion to set aside the aforementioned entry of a divorce decree absolute on the ground that entry of said decree was in violation of federal law.

12. On or about November 8, 1973, William L. Donnelly (via certified mail) filed his Objection to the entry of a decree absolute in Divorce No. 94432 with Register Harvey (decree nisi entered on May 25, 1973). Register Harvey never entered said objections on the Probate Court Docket.

13. On November 19, 1973, the Probate Court (Hays, J.) heard William Donnelly's motion to stay entry of a decree absolute pending disposition of said objections. Judge Hays ordered said objections entered on the docket. Harvey entered both the objections and the motion to stay (no longer necessary) on the docket.

14. In May of 1974, Judge Martin of the Middlesex Probate Court — despite his averments to Commissioner Maffi (SJC 74-53 Law) — refused to issue a final report of material facts regarding Divorce No. 94432 on the ground that William Donnelly's failure to prosecute the superfluous motion to stay entry of a decree absolute had made the decree nisi a decree absolute.

15. On December 18, 1973, the Probate Court (McGovern, J.) also refused to rule on William L. Donnelly's motion to set aside the entry of a divorce decree absolute on the ground that a decree absolute cannot enter until said objections have been disposed of. Scholz v Scholz, ___Mass. ___, 324 N.E.2d 617 (1975)

16. One of the libellee's objections to said decree nisi becoming absolute is want of jurisdiction by the Probate Court (Mass. G.L. c. 208,, ss 4 & 5). Peters v Peters, 62 (8 Cush.) Mass 529, 543 (1851). Peace v Peace, 362 Mass. 536 (1972).

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17. The decree nisi entered by the Probate Court, inter alia, ordered William Donnelly to convey his interest in certain real property to Jane Donnelly. The mortgage on said property was subsequently foreclosed and the excess funds from this foreclosure have been placed in escrow with the Middlesex Superior Court, Newton Savings Bank v William L. Donnelly, et al, No. 36560 Equity. Proceedings challenging both the conveyance by the Probate Court and the subsequent foreclosure are presently pending in the United States District Court for the District of Massachusetts, Donnelly, et al v Martin, et al, USDC No. 75-3785-M

18. On December 12, 1978, the Middlesex Superior Court (Young, J.) allowed Jane Donnelly's motion to release approximately $5,000.00 of the funds held in escrow. Jane Donnelly's motion was accompanied by her affidavit stating that she was entitled to this fund because she had a valid decree absolute from the Probate Court. Said funds are to be released to Jane Donnelly on December 29, 1978.

19. On December 18, 1978, the Probate Court refused to correct its error in entering a decree absolute despite the fact that said entry violated federal law (28 USC 1446(e)) and was contrary to the rulings of this Court..

WHEREFORE, petitioner prays,

1. That this Court issue a temporary restraining order restraining the Middlesex Superior Court from releasing any of the fund now held in escrow by that Court.

2. That said temporary restraining order be made a preliminary and permanent injunction pending disposition of this petition.

3. That this Court order the record of the Probate Court proceedings in Divorce No. 94432 be brought before it and set aside all orders of the Probate Court as null and void for want of jurisdiction.

4. For such other relief as law and justice may require.

21a

For the petitioner,

December 28, 1978

William L. Donnelly, pro se
33 Crescent Street
West Newton, Mass. 02165

(617) 527-2194

22a

101	1	74	4800-M	10	15	74	4	440	2	41				0112	74	4800-M	

PLAINTIFFS

WILLIAM L. DONNELLY

U.S.

DEFENDANTS

JANE P. DONNELLY, HONORABLE HASKELL C. FREEDMAN, HONORABLE WILLIAM E. HAYS, HONORABLE EDWARD T. MARTIN, HONORABLE JEREMIAH SULLIVAN and JOHN V. HARVEY

CLOSED

ATTORNEYS

WILLIAM L. DONNELLY, PRO SE
33 CRESCENT ST.
WEST NEWTON, MASS. 02165
(527-2194)

(HONORABLE HASKELL C. FREEDMAN)
ALAN K. POSNER
ASST. ATTORNEY GENERAL
373, STATE HOUSE, BOSTON, MASS.0213
(727-2216)

CAUSE

REMOVAL FROM STATE COURT

1974

Oct. 15 Application to proceed in forma pauperis, filed. Petition for removal received for filing.

18 Copies (2) of letters sent to Jeffrey Binder, Asst. A.G., and John E. Powers from William Donnelly stating that the case has been removed to U.S. District Court, filed.

Nov. 18 MURRAY, J. Re Affidavit of William L. Donnelly to proceed in forma pauperis. "Absent a sufficient affidavit to support the motion to proceed in forma pauperis, the same is hereby denied." Notice to William Donnelly.

*

Dec. 2 Notice of Appeal Filed

1975

Jan. 10 Certified Copy of Docket and Original Pleadings Sent to the Court of Appeals

CHECK HERE IF CASE WAS FILED IN FORMA PAUPERIS	FILING FEES PAID			JURY DEMAND
	DATE	RECEIPT NUMBER	C.D. NUMBER	☐ PLAIN ☐ DEF
				DATE
				STATISTICAL
				CARD DATE MAILED
				23a

DATE	PROCEEDINGS	Date Order or Judgment Noted
1974		
Nov.25	Petitioner's motion for relief from judgment, filed.	
1975		
Jan.10	MURRAY, J. Re petitioner's motion for relief from judgment. "This motion was brought to my attention today for the first time. The petitioner has not filed a sufficient affidavit and therefore the within motion is denied. The court is not seeking evidence but an averment as to his income and resources." Copy to Mr. Donnelly.	
15	Affidavit of William L. Donnelly, filed.	
16	MURRAY, J. Re affidavit of William L. Donnelly. "Treated as a motion for leave to proceed in forma pauperis, and allowed." Copy to Mr. Donnelly.	
20	Supplemental Certificate re pauper affidavit and docket entries delivered to the Court of Appeals.	
20	Pltf's motion for leave to take the testimony of all respondents by deposition upon oral examination, filed, c/s.	
20	Pltf's ints to the respondent Jane P. Donnelly, filed, c/s.	
20	Pltf's ints to the respondent Honorable Haskell C. Freedman, filed, c/s.	
21	Order of Court received from the Court of Appeals entered.... dismissed for lack of appellate jurisdiction and for mootness. Original pleadings returned from the Court of Appeals.	
27	MURRAY, J. Re pltf's motion to take testimony of all respondents by deposition upon oral examination. "Denied." Copies to counsel.	
Feb. 6	Copy of letter from W. Donnelly to Honorable Haskell Freedman, undated, filed.	
12	Letter from Judge Haskell Freedman dated 2/10/75 enclosing a copy of a letter he sent to the Attorney General's office, filed.	
19	Answer of Haskell C. Freedman, Judge of Probate, to ints propounded by pltf, filed, c/s.	
Mar.14	Pltf's motion for order compelling answers of deft Jane P. Donnelly, to ints, filed, c/s.	
14	Pltf's motion for order compelling answers of deft Honorable Haskell C. Freedman, to ints, filed, c/s.	
14	Pltf's motion for injunction, filed, c/s.	
14	Copy of pltf's letter to John E. Powers, Clerk, Mass. Appeals Court, dated 3/14/75, filed.	
May 13	Opinion received from the Court of Appeals entered....Affirmed.	
27	Pltf's petition for writs of habeas corpus, filed, c/s.	
June 9	MURRAY, J. Re petition for writs of habeas corpus. "The request for an order of notice filed herein is denied without prejudice."	

24a

CIVIL DOCKET CONTINUATION SHEET

PLAINTIFF	DEFENDANT	DOCKET NO. 74-4800-M
WILLIAM L. DONNELLY	JANE P. DONNELLY, ET AL	PAGE 2 OF 3 PAGES

DATE	NR.	PROCEEDINGS
1975		
June 16		State defts' motion to dismiss, filed,c/s.
16		Memorandum in support of state defts' motion to dismiss, filed,c/s.
July 7		Notice of Appeal filed.cc/cl
7		Application for Certificateof Probable Cause.
7		Motion for leave to proceed on Appeal in Forma pauperis.
30		MURRAY, J. Re application for certificate of probable cause. "On May 27, 1975 petitioner filed a second petition for writ of habeas corpus, in which are alleged only conclusions. Since the first petition for habeas corpus was dismissed, and the dismissal affirmed by the Court of Appeals, this court declined to issue an order of notice on the second petition absent factual alligations. On July 16 petitioner filed a paper in which he prayed that the "record in this matter" (case?) be returned to Middlesex Probate Court. While the court recognizes petitioner is a layman, and presumably not schooled in procedure, it is not too much to require of him that he state the factual basis of his complaint. Until he does so this court cannot know whether he is seeking to relitigate his first petition. Accordingly, his application for a certificate of probable cause is hereby denied." Copies to counsel.
Oct.22		Pltf's motion that the Court issue writs of certiorari, filed.
1976		
Jan 9		Petn's motion to consolidate with CA 75-3785-M, filed, c/s.
Jul 19		Copy of motion "request for habeas corpus", original filed in CA 75-3785-M, filed.
Sept 20		Notice to counsel and Mr. Donnelly: case scheduled for hearing on pltf's motion for writ of habeas corpus, 10/5/76 at 10 AM.
28		Pltf's memo of law # 3, filed, c/s. (See 75-
28		Affidavit #5 of William L. Donnelly, filed, c/s.
28		Pltf's notice to produce(4) re defts Brooklesby, J.Donnelly, Harvey and Powers (copies), filed, c/s.

25a

CIVIL DOCKET CONTINUATION SHEET

PLAINTIFF	DEFENDANT	DOCKET NO. _____ PAGE ___ OF ___ PAGES

DATE	NR.	PROCEEDINGS
Oct 5		MURRAY, J. Hearing on pltf's motion for writ of habeas corpus; arguments; decision reserved.
8		MURRAY, J. ORDER ENTERED: "Motion to consolidate CA 75-3785-M with CA 74-4800-M is denied. Petition for writ of habeas corpus in CA 74-4800-M is dismissed." Copies to Messrs. Donnelly and Posner.
19		Pltf's application for certificate of probable cause, filed, c/s.
19		Pltf's motion for relief from judgment, filed, c/s.
19		Pltf's notice of appeal, filed, c/s.
19		Pltf's memo of law No. 4, filed, c/s.
26		MURRAY, J. Re petitioner's motion for relief from judgment: DENIED.
26		MURRAY, J. Re petitioner's application for certificate of probable cause: DENIED. cc to parties.
28		Case forwarded to Court of Appeals informally.
Nov 3		Copies of papers filed in court of appeals: Motion to proceed in forma pauperis, petition for writs of habeas corpus, petition for writ of mandamus, filed.
5		Order of Court received from the Court of Appeals entered.... the requests for a certificate of probable cause are denied. Original pleadings returned from the Court of Appeals.
12		Order of Court received from the Court of Appeals entered. Petitions for writs of habeas corpus, and mandamus denied.
Dec 3		Order of Court from Ct of Appeals... denied.
Dec 22		Copy of letter Willliam L. Donnelly to Chief, Newton Police Dept., filed.
23		Petitioner's motion for habeas corpus and/or other protective orde filed.
27		Copy of letter William L. Donnelly to James P. Cody, Chief of Brockton Police Dept., dated 12/23/76, re case, filed.
28		MURRAY, J. ORDER OF REMAND ENTERED:"Upon its own motion the court hereby remands, pursuant to 28 U.S.C. § 1447(c), the case of Jane P. Donnelly v. William L. Donnelly (Divorce Libel No.94432) to the Probate Court for the County of Middlesex... the case having been removed improvidently and without federal jurisdictio cc to parties. 26a
28		All original papers in case, together with certified copy of dock and certified copy of order of remand forwarded to Middle

CIVIL DOCKET CONTINUATION SHEET

PLAINTIFF	DEFENDANT	DOCKET NO. 74-4800-[illegible]
DONNELLY	DONNELLY	PAGE 3 OF 3 PAGES

DATE	NR.	PROCEEDINGS
1977		
Jan 4		Pltf's motion to appeal remand order in forma pauperis, filed, c/s.
4		Pltf's motion for stay pending appeal, filed, c/s.
4		Pltf's notice of appeal, filed, c/s.
6		MURRAY, J. Re Petitioner's motion to appeal in forma pauperis: "Without assuming right of appeal, the motion is hereby granted." cc to parties.
12		Pleadings forwarded to Court of Appeals informally
14		Memorandum and Order received from the Court of Appeals entered.... Dismissed. Original pleadings returned from the Court of Appeals.

I hereby [illegible] on
Dec 12, 1978, that the
[illegible]

BY: Sheila A. [illegible]

27a

Commonwealth of Massachusetts

MIDDLESEX, SS.

SUPERIOR COURT

8

EQUITY NO. 36560

NEWTON SAVINGS BANK

VS.

WILLIAM L. DONNELLY, JANE P. DONNELLY
BERNARD R. SILVA, JR., and
FRANCIS L. DONNELLY

ORDER ON MOTION FOR
RELEASE OF FUNDS

This action came on for hearing before the Court, Young, J. presiding, upon the motion of the defendant, Jane P. Donnelly, for release of funds, and thereupon, upon consideration thereof, it is ORDERED and ADJUDGED:

1. That the Clerk of Court be and hereby is authorized to retain the sum of Six Thousand Dollars ($6000.00) to be held by him until further order of the Court.
2. That the Clerk of Courts be and hereby is ordered to pay to the defendant, Jane P. Donnolly the remainder of the balance in his hands on December 29, 1978.

Dated at Cambridge, Massachusetts, this twelfth day of December, 1978.

Robert F. Trant
Assistant Clerk

28a

33 Crescent Street
West Newton, Massachusetts 02165
March 14, 1975

John [redacted] Powers, Clerk
Massachusetts Appeals Court
Boston, Massachusetts 02108

Dear [redacted] Powers: Re: AC75-163

Enclosed, for information purposes only, is a copy of a Motion For Injunction filed today with the United States District Court, District of Massachusetts.

The [redacted]ting of this matter in the Massachusetts Appeals Court on March 4, 1975 was in error since the United States District Court has had jurisdiction over this matter since October 16, 1974 when the cause was removed to federal court. Copies of the removal petition are [redacted] with the Massachusetts Supreme Judicial Court (Docket No. 74-53 Law) and Middlesex Probate Court (Docket No. 94432).

28 U.S.C. Section 1446(e) operates as a statutory stay upon [redacted] proceedings and this letter and the [redacted] sent to you as a matter of courtesy and are not to be construed, in any way, as an appearance by the undersigned.

Yours truly,

William D. Donnelly

cc. [redacted]erk, United States District Court(Docket No. 74-4800M)

Clerk, Massachusetts Supreme Judicial Court(Docket No. 74-53 Law)

Register, Middlesex Probate Court (Docket No. Divorce 94432)

[redacted]an Posner, Assistant Attorney General

29a

COMMONWEALTH OF MASSACHUSETTS

RECEIVED MAY 21 1979

MIDDLESEX, SS

APPEALS COURT

WILLIAM L. DONNELLY
Appellant/Petitioner

V

MIDDLESEX SUPERIOR COURT, ET AL
Appellees/Respondents

S. J.
APPEALS COURT
Filed May 21, 1979
John E. Powers
Clerk

NO. 78-0375-CV

MOTION

Now comes the appellant and moves pursant to Mass.R.A.P.-Rule 12 and Mass.G.L.A. c. 261, s. 27A et seq, that this Court grant appellant leave to proceed in forma pauperis and on the original record in his appeal from the denial of the above entitled petition for certiorari.

Appellant further moves, pursant to Mass.R.A.P.-Rule 19, that he be allowed to file one (1) typewritten original and seven (7) xerox copies of the brief for the appellant.

For the appellant,

May 15, 1979

William L. Donnelly, pro se
33 Crescent Street
West Newton, Mass. 02165

AFFIDAVIT OF INDIGENCY

I, William L. Donnelly, certify that I am unemployed; that my cash on hand or in banks is less than $30.; that my sole source of income/support consists of State aid ($40. per week) and education assistance loans (law school); that I am unable to pay the cost of the above appeal; and that the issues I intend to present on appeal are:(1) Whether State courts are barred from proceeding further once an action has been removed to federal district court; (2) Whether the Probate Court can enter a decree absolute without first dealing with Objections to said decree becoming absolute, and (3) whether the decree of the Probate Court is null and void for want of jurisdiction

May 15, 1979

William L. Donnelly

Subscribed and sworn to before me on this 15th day of May, 1979

Phillip G. Peak, Jr.
NOTARY PUBLIC
Notary Public

MY COMMISSION EXPIRES OCTOBER 27, 1983

APPEALS COURT
Allowed, Hurst, J.
Denied _____
Date: May 21, 1979

SUPREME COURT OF THE UNITED STATES

RECEIVED
MAY 29 1980
OFFICE OF THE CLERK
SUPREME COURT, U.S.

WILLIAM L. DONNELLY
Appellant

V

MIDDLESEX SUPERIOR COURT, ET AL
Appellees

NO. 79-6678

MOTION

Now comes the appellant and moves, pursuant to Title 28 United States Code Section 1915, that this Court grant appellant leave to proceed on appeal in forma pauperis. In the proceedings below, the Massachusetts Appeals Court allowed a similar motion (copy attached).

For the appellant,

William L. Donnelly

May 23, 1980

William L. Donnelly, pro se
33 Crescent Street
West Newton, Mass. 02165

(617) 527-2194

AFFIDAVIT OF INDIGENCY

I, William L. Donnelly, certify that I am unemployed; that my cash on hand or in banks is less than $40.00; that my sole source of support during the past five years has consisted of State aid (medical disabilities) and/or educational assistance loans (law school); that I am unable to pay the cost of the above appeal; and that the substantial federal question I intend to present on appeal is whether state courts are prohibited from proceeding further once a cause has been removed to federal district court.

William L. Donnelly

Subscribed and sworn to before me on this 23rd day of May, 1980

Notary Public

My commission expires on 4.13.84